

APPEAL NO. 040270
FILED MARCH 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 13, 2004. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the claimant had disability from August 20 through September 22, 2003; and (3) the employer did not make a bona fide offer of employment (BFOE), entitling the appellant (carrier) to adjust the claimant's post-injury earnings. The carrier appeals the injury and disability determinations on sufficiency of the evidence grounds and argues that the claimant cannot establish disability, given the availability of light-duty employment, albeit not a BFOE. The claimant urges affirmance. The hearing officer's BFOE determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

As stated above, the carrier asserts that the claimant cannot establish disability, given the availability of light-duty employment consistent with the claimant's restrictions, albeit not a BFOE. In support of its position, the carrier cites Texas Workers' Compensation Commission Appeal No. 012646, decided December 10, 2001, and cases cited therein. We have rejected similar arguments in the past. See Texas Workers' Compensation Commission Appeal No. 023240, decided February 19, 2003; Texas Workers' Compensation Commission Appeal No. 022908, decided January 8, 2003.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **GREAT AMERICAN ALLIANCE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge